Supreme Court, U.S.
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IN THE

Supreme Court of the United States

IN RE: Mostafa Reyad

Petition for A Writ of Mandamus

Mostafa Reyad
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QUESTIONS PRESENTED FOR REVIEW

1. Whether it is a violation of the Eighth and Fourteenth Amendments right for a defendant whom against him, eight garnishment orders in the amount of $ 12.8 million, which exceeds by far his fixed assets, and these orders are not in the records of any court. The invisible orders garnished all his personal and business bank accounts, and promptly closed all his business, and caused him actual damages approximately $ 15 million.

2. Whether an attorney who conspired with a Magistrate Federal Judge and executed orders by the authority of the United States without the knowledge of the United States can be investigated for possible prosecution.

PARTIES TO THE PETITION

1. The United States.
2. IndyMac Federal Savings Bank, the successor in interest of IndyMac Mortgage Holdings, Inc. and IndyMac, Inc.
3. Attorney David R. Schaeffer in his individual capacity.

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IN RE: MOSTAFA REYAD'S PETITION FOR MANDAMUS

Petitioner, for the last five years is under seize of attachments and garnishments in the amount of $ 18.5 million versus a perjured complaint of $ 243,849.78. Even if this perjured complaint is correct, the seize is seventy five times of the complaint. The extraordinary circumstances of the entire case warrants the exercise of this Court discretionary powers, *see* *Mathews v. Eldridge*, 424 U.S. 319, 331, n. 11 (1976).

Orders Issued and Executed Without Entry

The Major issue presented is a relief of eight garnishment orders issued by Magistrate Federal Judge, William I. Garfinkel, U.S.M.J of the District of Connecticut on May 17, 2000. Each order is a garnishment against Petitioner in the amount of $ 1,600,000, in the total of $ 12.8 million. None of these eight orders on the record of the case in any court. The

orders executed by attorney David R. Schaeffer on May 18, 2000. The orders issued to 1) Fleet Bank; 2) Hudson United Bank; 3) Aetna Life Insurance Annuity Company; 4) New England Financial Annuity Company; 5) American Express Financial Advisors; 6) VALIC; 7) The Equitable a/k/a the Equitable Life Assurance Society of the United States; and 8) IDS Life Insurance Company, *see* eight Writs of Garnishments in Appendix.

Orders Entered

1. In the case IndyMac Bank, F.S.B. v. Mostafa Reyad and Wafa Reyad, No. 3:00CV835, District of Connecticut Honorable Christopher F. Droney, U.S.D.J. denied acknowledge the eight garnishment orders without a hearing nor opinion memorandum. Petitioner appealed to the Second Circuit Court of Appeals. It denied review and issued its mandate on March 9, 2005:

Petitioners, pro se, have filed a petition for a writ of mandamus. Upon due consideration, it is ORDERED that the petition for a writ of mandamus is denied. Petitioners have failed to demonstrate that their right to the issuance of a writ is clear and indisputable or that alternative remedies are not available. See. In re Steinhardt Partners L.P., 9 F. 3d 230, 233 (2d Cir. 1993). It is FURTHER ORDERED that Petitioners' motion for an expedited hearing is denied as moot.

2. In the duplicate case IndyMac Mortgage Holdings, Inc. v. Mostafa Reyad and Wafa Reyad, No. 2000CV2237 District of New Jersey. Honorable Joseph A. Greenaway, Jr., U.S.D.J., issued *ex parte* order attaching and garnishing Petitioner's assets up to $ 5.7 million, including Petitioner's residence and a lis pendence on real estate property. Judge Greenaway entered the "stay" on October 20, 2000. Petitioner appealed to the Third

Circuit Court of Appeals. It issued on December 18, 2003 the following order:

The appeal is dismissed for lack of appellate jurisdiction. As the Court has previously explained, the order staying the proceeding is not appealable because it merely postpones the resolution of the case pending proceedings in another federal court. *See* Spring City Corp. v. Am. Bldgs. Co., 193 F. 3d 165, 171 (3d Cir. 1999); Michelson v. Citicorp Nat'l Servs., Inc., 138 F. 3d 508, 514 (3d Cir. 1998). In addition, because appellant did not seek leave of court before submitting his two motions for filing, there is no final order adverse to the appellant for the Court to review. Appellant's motion to disqualify Rowena Moffett, Esquire is denied.

JURISDICTION

The Supreme Court of the United States has the Jurisdiction pursuant to 28 U.S.C. 1651 (a) and 28 U.S.C. 1291

STATEMENT OF THE CASE

This Petition for relief from eight garnishment orders issued

and executed against Petitioner without notification to him, while he appears in Court at all times. The garnishment orders in the amount of $ 12.8 million reads by the authority of the United States. There are no records of these orders in any court, accordingly, the orders issued and executed without the knowledge of the United States. The invisible eight orders severely injured Petitioner in the amount of $ 15 million in actual damages. The District Court denied release the orders, and the Second Circuit denied review. The Circuit applied the petition on the standard of attorney work product, *see* Steinhardt at 233, supra, and the Petition is for relief of garnishment orders issued and executed without the knowledge of Petitioner, nor the District Judge.

The extraordinary circumstances of this case is devastating, here the invisible orders caused Petitioner to close his business in the same day it executed. Petitioner closed his business on May 18, 2000, and the orders deprived Petitioner from any source of living. It are unlawful final orders

pursuant to 28 U.S.C.1291, and due to its significant magnitude of damages, it establishes Petitioner's clear and indisputable right for relief pursuant to 28 U.S.C. 1651 (a), *see Will v. United States*, 389 U.S. 90, 95 (1967):

> It is clear that only exceptional circumstances amounting to a judicial "usurpation of power" will justify the invocation of this extraordinary remedy. *De Beers Consol. Mines, Ltd v. United States, 325 U.S.* 212, 217 (1945). *Id.*

and *see* De Beers Consol. Mines v. United States, 325 U.S. 212,222,223 (1945)

> And, if so, it is difficult to see why a plaintiff in any action for a personal judgment in tort or contract may not, also, apply to the chancellor for a so-called injunction sequestrating his opponent's assets pending recovery and satisfaction of a judgment in such a law action. No relief of this character has been thought justified in the long history of equity jurisprudence. *Id.*

See, also *Grupo Mexicano De Desarrollo, S.A. v. Alliance Bond Fund*, 527 U.S. 308 (1999); n6 and n7.

> As we stated in *Adler v. Fenton, 65 U.S. 407, 24 HOW 407, 411, 412, 16 L. Ed. 696 (1891)*. Our laws determine with accuracy the time and manner in which the property of a debtor ceases to be subject to his disposition, and become subject to the rights of his creditor. *Id.* n6.
>
> The state statute eliminating the need for a judgment may have altered the common-law rule that a general creditor has no interest in his debtor's property. *Id.* n7.

The case underlying this petition was initiated in the District of Connecticut, Plaintiff filed his complaint on May 8, 2000. On May 9, 2000 Judge Christopher F. Droney, U.S.D.J. ordered referring motion for prejudgment remedy, motion for temporary restraining order, and motion for

disclosure of property, to Magistrate William I. Garfinkel, U.S.M.J. and ordered hearing to be held on May 16, 2000.

The records of the underlying case do not show the consent of the parties to allow the Magistrate to act as the Presiding Judge. Accordingly, under the circumstances, the Magistrate is assisting the District Judge, the Magistrate has the jurisdiction to hear dispositive motions and make recommendation to the Presiding District Judge, and does not have the jurisdiction to hear motions for injunctive relief; *see* 28 U.S.C. 636 (b)(1)(A).

The said three motions are injunctive relief motions inadequate to be heard by the Magistrate under the circumstances. Pursuant to the order of Judge Droney, hearing was held before the Magistrate on May 16, 2000. Immediately after the parties declared their appearance, and before any statement of any party. The Magistrate announced

his predisposition against Petitioner; *see* Tr. May 16, 2000, p. 3 line 10.

> *THE COURT: Yes, Ms. Borger affidavit. And it is clear from that affidavit that some sort of PJR is warranted. I don't think there's really any question about it.*

The Magistrate statement is a strong reflect of deep-seated favoritism to Plaintiff. It reflects a predisposition, readiness; and willingness to rubber stamp whatever demands may be suggested by Plaintiff. During the hearing after the Magistrate statement, Plaintiff found the opening opportunity and requested the prejudgment remedy to be $ 1.6 million against Petitioner instead of $ 1,271,000 that had been pled. *see United States v. John Doe*, docket number 02-1362 (2nd Cir. October 19, 2003).

The record there reflected willingness to rubber stamp any suggestion made by the United

States Attorney_an act inconsistence with the exercise of an informed discretion. *Id.* p. 2 line 19.

See, Michael Hathcock; Sandy Hathcock v. Novistar International (Case number 94-1021, 4th Cir.) at III

The Judge's *ex parte* contacts requesting the Hathcock's counsel to draft at least the factual basis of a default order, and possibly its legal conclusion as well, do not foster an impression of objectivity.

See Liljeberg v. Health Acquision Corp. 486 U.S. 847, 848. (1988)

"2. Vacatur was a proper remedy for the 455 (a) violation in the circumstances of this case." *Id.*

The Magistrate ordered the prejudgment remedy during the hearing. The Magistrate entered his order in the record on May 17, 2000, it stipulates at p. 2.

The defendants are further permitted to use money from their bank accounts to pay for reasonable living expenses, and to retain counsel if they have not done so already.

The Magistrate violation of Judicial Conduct

On May 17, 2000 the Magistrate entered his order of the hearing held May 16, 2000. The order was never indorsed by the District Judge in any respect. The Magistrate order is therefore, a nullity. Petitioner applied to the District Court repeatedly, and applied to the Second Circuit, all denied without opinion memorandum, *see* 28 U.S.C. 636 (b)(1)(A); *Reynaga v. Cammisa*, case number 91-15468 (9th Cir. August 3, 1992), and its comment citing *Taylor v. Oxford*, 575 F. 2d 152, 154 (7th Cir. 1978).

The Magistrate ordered the prejudgment remedy in the amount of the $ 1.6 million. The District Judge ordered the

TRO. No bond was ordered or issued, Petitioner filed a motion for posting a bond, which is injunctive relief. Judge Droney referred the motion to the Magistrate, the motion was denied, Judge Droney affirmed without *De Novo* review or hearing. Petitioner invoked *Mexicano*, supra, repeatedly, all motions denied without a hearing or opinion. The Magistrate order that was entered on the records on May 17, 2000 for prejudgment remedy should be vacated as a matter of law.

On May 17, 2000, the same day the PJR ordered, the Magistrate engaged in an *ex parte* unauthorized unilateral communication with Plaintiff's attorney David R. Schaeffer, *see Code of Judicial Conduct of United States Judges*. Mr. Schaeffer went to Connecticut District Court at Bridgeport carrying with him at least eight garnishment orders, that he prepared on his own computer, *see* the lower left corner of the eight garnishment orders. Each order reads "BY THE

AUTHORITY OF THE UNITED STATES", the writs of garnishment in the total amount of $ 12.8 million, the orders were ready for the Magistrate to sign it. Mr. Schaeffer handed the orders to the Magistrate, the Magistrate executed it, the District Clerk office certified that six out of eight original documents in file. The District Clerk Office certification was improper and none was entered on the records, *see the District Court docket sheet*. Judge Droney knew nothing about it, and denied Petitioner's request for relief, without a hearing or opinion memorandum.

The first writ garnished Fleet Bank, Petitioner and his wife maintain personal and business accounts in that Bank. On May 18, 2000 all checks returned unpaid. It is well known that no business can operate without bank accounts, Petitioner closed his business on the spot. Petitioner and his wife maintained about $ 500,000 in cash equivalent with insurance policies and annuities, all garnished on

May 18, 2000, and Petitioner since that day is without any source of income or availability to any asset, because Petitioner and his wife networth in fixed assets is far below the writs of garnishment. The punitive excessive attachments and garnishments violate Petitioner's rights granted by the Eighth and the Fourteenth Constitutional Amendments.

The Magistrate violated the *Code of Conduct*, in effect conspiring with Mr. Schaeffer to injure a citizen without any apparent reason. Indeed, Federal Judges and Magistrate Judges are absolutely immuned for any acts committed in their judicial duties, *see Pulliam v. Allen*, 466 U.S. 522 (1984) (1. Judicial immunity is not a bar to prospective injunctive relief against a judicial officer, such as petitioner, acting in her judicial capacity. Pp. 528-543) Again, this case is different. The Magistrate would be acting in his judicial capacity, if there is no violation. Here, there is a violation, and there is a tremendous amount of damages

approximately fifteen million dollars. Justice must determine the proportion of liability of the Magistrate, and the proportion of liability of Mr. Schaeffer and the Plaintiff. The District Court may determine that Mr. Schaeffer and Plaintiff are one hundred percent liable for Petitioner's damages. If justice would determine that the Magistrate is absolutely immuned, the United States must carry that proportion of liability for the acts committed by the Magistrate, because the orders have been executed as its reads "By the authority of the United States" The District Court denied all related motions, and the Circuit denied review. There is no other remedy available from anywhere. Mandamus is warranted and must be Granted by this Court, the unauthorized order on the record dated May 16, 2000, and the invisible writs of garnishment in the amount of $ 12.8 million must be vacated. Upon remand, the Court should order the District Court to schedule a

hearing related to attorney Schaeffer's misconduct, and possibility for investigation and prosecution.

Furtherly, this Petition is extended for relief of two identical cases filed concurrently on May 8, 2000 by two Plaintiffs namely, 1) IndyMac Mortgage Holdings, Inc. and 2) IndyMac, Inc., in the District of Connecticut and in the District of New Jersey. New Jersey action entered on May 9, 2000. The two cases are based on a breach of contract, and a breach of guaranty between two citizens of different states. Plaintiff does not seek any equitable relief and no Federal Cause of Action. Connecticut action contains additional count alleging

violation of Connecticut Unfair Trade Practices Act.

Plaintiffs' complaint does not assert any cause of action for fraud, although Plaintiffs' complaints contain various allegations of alleged conduct committed by third parties independent contractors working with Petitioner.

Plaintiff's sue Petitioner's wife, Wafa Reyad alleging signing a guaranty guaranteeing Petitioner's obligation to one Plaintiff, namely IndyMac Mortgage Holdings, Inc.

A

New Jersey Action

New Jersey Action entered on May 9, 2000. On May 12, 2000, the District Court, Judge Greenaway, issued *ex parte* order attaching and garnishing up to $ 5.7 million of Defendants' assets including Petitioner's residence and a lis pendence on a real property purchased and owned by Petitioner's daughter, *see* *Connecticut v. Doehr*, 501 U.S. 1,2. (1991).

New Jersey law limits the circumstances under which a plaintiff in a civil action may obtain a prejudgment attachment. This limitation is consistent with New Jersey writ of attachment being a statutorily created extraordinary remedy. *See* N.J. Stat. 2A: 26-2, and *see* *Wolfson v. Bonello*,

270 N.J. Super. 274, 637 A. 2d 173, 180, 181 (N.J. Super. A.D. 1994). The *ex parte* order, also ordered garnishment on insurance policies and annuities which exempted from attachment and execution pursuant to New Jersey law; N.J. Rev. Stats 17B:24-6 and 17B:24-7, New Jersey law is coterminous with this Court's most recent decision in *Rousey et ux. V. Jacoway*, No. 03-1407, dated April 4th, 2005.

On October 30, 2000, New Jersey District ordered a"stay" of the action pending final resolution in the Connecticut action. The Third Circuit affirmed. The New Jersey order means, that, that Court have nothing to do except to execute the judgment or apply res judicata, pursuant to *Cohen v. Beneficial*, 337 U.S. 541. (1949) The stay order of New Jersey District is equal to dismissal, and hence, it is a denial of due process as guaranteed by the Fourteenth Amendment right, in maintaining an indefinite stay. Connecticut

Court denied review of any orders of the New Jersey District. The most unfair punished is Petitioner's daughter who is unable to sell her own property, even though she is not party to either case. A District Court delivered its jurisdiction to another District which had no jurisdiction, to seize property of a citizen after its delivery of that jurisdiction. The New Jersey District maintains that seizer fits under this Court definition of "usurpation of power" or opposite to it; *Will v. United States* 389 U.S.90,95 (1967), which caused a severly damageable due process violation. New Jersey District Court must dissolve the attachments and garnishments orders dated May 12, 2000.

B

Connecticut Action

The Connecticut action is a duplicate of the New Jersey action. Because the stay imposed on New Jersey action, and the Connecticut continued, Petitioner continued to defend the same issues in both actions. Plaintiffs IndyMac Mortgage Holdings, Inc. and IndyMac, Inc. initiated the action, although IndyMac, Inc. was dismissed on August 10, 2001, the reference to the dismissed part of the action is needed due to its relation to res judicata issues, and the statutory effect on Judge disqualification.

The Complaint (Doc # 1) p. 3 states correctly that Petitioner entered on December 6, 1996 into a contract with "WLCA". The records maintained with the Secretaries of the State of Delaware and the State of California are the same, copy of the records in the two States filed with the District Court showing that the

WLCA name was relinquished on October 5, 1994 and Plaintiff did not argue the issues. The choice of law stipulates in the contract, and the District Court affirmed that the governing law of the contract is California law. According to California law WLCA cannot maintain an action, *see* California Corporation Code section 2105 (a), and section 2203 (c)

> *see* *Timberline, Inc. v. Jaisinghani* (1997) 54 Cal. App. 4th 1361 1365-66 [64 Cal. Rptr. 2d4]. (This means a suspended corporation may not prosecute or defend an action in California court); and *see* *United Medical Management Ltd v. Gatto* (1996) 49 Cal. App. 4th 1732, 1740 [57 Cal. Rptr. 600]. (the defendant may assert by demurrer or as an affirmative defense in the answer the lack of capacity to maintain an action arising out of intrastate business.)

The Plaintiffs' complaint included support affidavits which contain perjured information. Petitioner's motion attacking the perjured affidavit of Brian E. Ainslie (Doc # 10), filed with the District Court on August 17, 2001 (Doc # 160), which is a motion for injunctive relief. Judge Droney assigned it to the Magistrate; contrary to 28 U.S.C. 636(b)(1)(A), the Magistrate denied, Petitioner appealed to the District Judge, and this motion is still pending. This develop a question of law. How can a court decision, seizing every dollar a defendant claims without reviewing defendant's evidence of a perjured complaint reach a fair conclusion? Petitioner believes that is impossible and it is denial of his due process.

On August 10, 2001, Judge Droney dismissed Plaintiff

namely, IndyMac, Inc. on the ground that their contract with Petitioner includes forum-selection clause selecting California forum. On September 7, 2001, the remaining Plaintiff, the Holdings, Inc. filed the Amended Complaint (Doc # 165). Plaintiff replaced the dismissed part; para. 24-34, and inserted it again as para. 16-19 of the Amended Complaint. Plaintiff does not have a single evidence to present, except evidences from the dismissed part of IndyMac, Inc., originated by the dismissed Plaintiff. Petitioner filed motions to apply res judicata repeatedly, all denied.

The Second Circuit explained the mechanism of application of *res judicata*, analogous to the instant action, *see* *Maharaj v. Bank America Corp*., docket number 96-7021 (2nd Cir. 1997).

[Rather, the first judgment will preclude a second suit only when it involves the same "transaction" or connected series of transactions as the earlier suit; *that is to say, the*

second cause of action requires the same evidence to support it and is based on facts that were also present in the first. Id. At 1464; *see* also, *Nevada v. United States*, 463 U.S. 110, 128-30 (1983) (requiring courts to first decide whether the "same cause of action" is being sued upon)] ; *Federated Dep't Stores v. Moitie*, 452 U.S. 394, 401 (1981)

The application of res judicata to the case adding another feature, not opinioned before by this Court; *see* 28 U.S.C. 455 (b)(3), and 455 (e), established no waiver for judge disqualification. Judge Droney adjudicated and opinioned the dismissal of IndyMac, Inc. as part of this action, pursuant to section 455 is disqualified and parties waiver is inapplicable *see United States v. Outler*, 659 F. 2d, 1312-1313 (5th Cir. 1981).

> Stating that recusal under 455 (b)(3) "When the two proceedings have a common single transaction or event at issue."

Judge Droney ordered "no legal argument" in any hearing for a period exceeding more than three years, He assigned relief motions to the Magistrate, the Magistrate engaged in conspiracy with Plaintiff attorney, and Judge Droney allowed a prejudgment attachments and garnishments against Petitioner in a total of $ 18.5 million versus Plaintiff's claim of damage in a contract dispute in the amount of $ 243,849.78. Simply put, Judge Droney allowed punitive damages seventy-five times of Plaintiff's demands against Petitioner and deprived Petitioner from any source of living. Is that normal and acceptable?

See Litekey v. United States, 507 U.S. 540, 552 (1994).

> "bias" and "prejudice" demands that they be applied only to judicial predisposition that go beyond what is normal and acceptable. *Id.*

Moreover, Judge Droney denied Petitioner's motion to injoin Plaintiff to release the lis pendence from the real estate

property purchased and owned by Petitioner's daughter. Judge Droney denied review of the super attachment and garnishment against Petitioner in the amount of $ 18.5 million. Although these are judicial decisions, its totality show an antagonism, in a way which deteriorates the Public confidence in justice. On April 30, 2004, Judge Droney lowered the prejudgment remedy issued and entered by the Magistrate from $ 1.6 million to $ 1.1 million. The District Court displayed it as per Plaintiff's request as follows:

1. Plaintiff's claims	$ 243,849.78
2. Attorneys fee, CT, N.J. and 3rd Cir.	$ 355,783.20
3. Punitive damages	$ 500,367.02
TOTAL	$ 1,100,000.00

It is axiomatic for a District Court to issue an order of a prejudgment remedy to include more than double in punitive damages, and to include attorney's fee in a

prejudgment remedy which can be explained by anything other than punitive and antagonism. Judge Droney lowered the prejudgment remedy on the papers only and denied review the $ 18.5 million attachments and garnishments. Judge Droney and Magistrate Garfinkel must be disqualified.

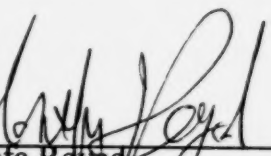
CONCLUSION

Petitioner met his burden and demonstrated that his entitlement for relief is clear and indisputable. Petitioner is entitle to a writ for the following:

1. Vacating the Order issued by the District of New Jersey dated May 12, 2000, attaching and garnishing Petitioner's assets up to $ 5.7 million.
2. Vacating the order issued by Magistrate William I. Garfinkel, U.S.M.J. dated May 17, 2000 and to dissolve the prejudgment remedy in the amount of $ 1.6 million.

3. Vacating the eight writs of garnishment, not in the records of the District of Connecticut, in the total of $ 12.8 million.
4. Vacating the order issued by Judge Droney dated April 30, 2004 in the amount of $ 1.1 million.
5. Judge Droney and Magistrate Garfinkel to be disqualified from the action.

The Petitioner, pro se
Mostafa Reyad

By: 

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